IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2851 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S HINDUSTAN SALTS LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2851 of 1998

MR PRANAV G DESAI for Petitioner No. 1

MR KG SHETH, APP Wfor Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/03/2003

ORAL JUDGEMENT

Present petition has been filed by the petitioner for quashing and setting aside the complaint and the process issued in Criminal Complaint Nos.413 of 1996 and 136 of 1997 by the learned J.M.F.C., Bajana, Tal. Patdi, Dist. Surendranagar, under the provisions of Payment of Bonus Act, 1965.

2. Initially, notice was issued and ad-interim relief was also granted vide order dated 1998. Thereafter, matter could not be proceeded further.

3. Heard learned counsel for the petitioner, Mr.P.G.Desai. It is mainly argued that the petitioner company is a Government of India enterprise and Payment of Bonus Act is a Central Act and, therefore, State Government has no authority to file the complaint in question. It is further argued that there is a specific notification issued by the Regional Labour Commissioner (Central), Ahmedabad on 5-11-1997 (Annexure-D). The next point raised by him is that the matter has been settled between the parties i.e. the Company and the Union and, therefore also, complaint is required to be quashed. He has relied upon the defining of 'appropriate Government' as mentioned in Sec.2(5) of the Payment of Bonus Act ('the Act' for short) which reads as under:

> ""appropriate Government" means--
>
> (i) ......
>
> (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;"

He has relied upon the case reported in AIR 1997 Supreme Court 645 page 45 more particularly para 29.

4. Facts remain that there is a specific provision namely Sec.27(1) of the said Act. Sec.27(1) reads as under:

> "The appropriate Government may, by notification in the Official gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction."

It has been made clear by the complainant that since he is the appropriate authority as defined under Sec.27(1) of the Act, he is entitled to file the complaint in

question.

5. It is clear from the above that the appropriate Government in relation to any other establishment other than the appropriate Government under the Industrial Disputes Act is the Government of the State in which other establishment is situate. In these circumstances, petitioner will not get any benefit out of the arguments advanced by his learned counsel. As far as other aspects of the matter i.e. notification was issued on 5-11-1997 and complaint was filed on 23-7-1996, it may be stated that they are questions to be dealt with by the court below at the time of trial. However, questions as to whether parties can settle the matter and also whether the person having valuable right to sign the settlement, copy of which has been produced by the petitioner, has used it after following proper procedure cannot be decided by this Court but can be decided by the trial court at the time of trial. Hence, this petition is required to be rejected.

6. This petition is rejected. Rule is discharged. Interim relief stands vacated. Court below is directed to proceed with the matter as expeditiously. Petitioner is at liberty raise all the contentions before the court below at the time of trial.

7. The observations by this Court in this order being made for the purpose of deciding this petition may not prejudice the parties at the time of trial.

(R.P.DHOLAKIA,J.)
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